

Amendment No. 1 to SB1827

Beavers
Signature of Sponsor

AMEND Senate Bill No. 1827

House Bill No. 583*

By deleting all language after the enacting clause and substituting instead the following:

SECTION 1. Tennessee Code Annotated Section 39-11-703 is amended by inserting the following as a new subsection (b) and renumbering the existing subsections accordingly:

(b) Any real property, including any right, title and interest in the whole of or any part of any lot or tract of land and any property used as an instrumentality in or used in furtherance of a violation of the following laws shall be subject to judicial forfeiture:

(1) a conviction for a violation of TCA § 39-17-417(i) or (j), or the commission of three (3) or more acts occurring on three (3) or more separate days within a sixty-day period, and each act results in a felony conviction under title 39, chapter 17, part 4; or

(2) the commission of three (3) or more acts occurring on three (3) or more separate days within a sixty-day period, and each act results in a conviction for promoting prostitution under title 39, chapter 13, part 5.

SECTION 2. Tennessee Code Annotated Section 39-11-704(a) is amended by deleting the code citation “§ 39-11-703” and substituting instead “§ 39-11-703(a).”

SECTION 3. Tennessee Code Annotated Section 39-11-704 is further amended by inserting the following as a new subsection (b) and renumbering the remaining subsections accordingly.

(b) No interest in real or personal property shall be forfeited under § 39-11-703(b), unless the owner or interest holder is convicted of a crime or crimes described in § 39-11-703(b). If the owner or interest holder is an entity other than a natural person, said property shall not be forfeited unless the entity’s officer, employee or agent is

convicted of the aforesaid crime or crimes and the state shall also have the burden to establish beyond a reasonable doubt the following additional elements:

(1) The conviction is based on acts by the defendant in the course of and within the scope of the defendant's employment; and,

(2) The entity knew, or had reason to know from information in the entity's possession, other than through its convicted officer, employee or agent, of the criminal nature of the acts.

SECTION 4. Tennessee Code Annotated Section 39-11-712 is amended by designating the existing language as subsection (a) and by adding the following as new subsection:

(b)

(1) If the court orders a property interest in property owned as tenants in common forfeited under this section to be sold, whether by a public official or by a person having an interest in the property as in subdivision (a), the innocent spouse of a person whose property interest has been forfeited shall have the same right to such property interest as granted an innocent spouse in subdivision (b)(2) or (3). If there is no spouse or if such spouse does not elect to pursue the rights provided in subdivision (b)(2) or (3), then any other person or persons whose interest in such property has not been forfeited shall have the first right to purchase the forfeited interest for its fair market value prior to the court ordered sale. In order to exercise the first right to purchase, such person or persons must petition the appropriate circuit or criminal court at least thirty (30) days prior to the date the court ordered sale is to be conducted. If such person or persons do not purchase the forfeited property, the sale shall be conducted as provided by law. For the purposes of this subdivision (b)(1), "fair market value" is determined by taking an average of three (3) appraisals conducted by separate and qualified real estate appraisers selected by the court. Before any such purchase, the court shall approve the average of the appraisals for fair market value as reasonable.

(2)

(A) Notwithstanding the provisions of subdivision (b)(1) to the contrary, if a court orders property forfeited under this section pursuant to subdivision (a) and the property is held through tenancy by the entirety and one (1) spouse's interest is not forfeited, then such spouse shall have the first right to purchase the forfeited expectancy interest in the property.

(B) A spouse purchasing such forfeited property interest in such manner shall take the property subject to all bona fide liens on the property. In order to exercise the right of purchase, such spouse shall petition the court which ordered the forfeiture for such a purchase at fair market value at least fifteen (15) days prior to the court ordered sale.

(C) If such spouse does not purchase the forfeited expectancy interest, such spouse shall retain such spouse's interest as a tenant in common subject to all bona fide liens, and the forfeited expectancy interest shall be sold at public auction and the proceeds disbursed as provided for in § 39-11-713.

(D) If a party possessing a security interest in property being held by an innocent spouse institutes proceedings pursuant to its deed of trust or otherwise that results in the foreclosure and sale of such property, such innocent spouse shall be entitled to receive from the first proceeds of such sale an amount equal to an elective share as provided in § 31-4-101, subject to bona fide outstanding liens not satisfied by the remainder of the proceeds.

(E) If the innocent spouse predeceases the defendant spouse, if there are children of the innocent and guilty spouse, at least one (1) of which is eighteen (18) years of age or less on the date of such sale, and if the entity holding the right of expectancy is the state, then upon the sale of the property, one third (1/3) of the proceeds therefrom shall be

allocated and divided equally among all the children, subject to all outstanding bona fide liens not satisfied by the remainder of the proceeds.

(3)

(A) Notwithstanding the provisions of subdivision (b)(1) to the contrary, if the property subject to forfeiture under this section is property titled solely in the name of a guilty spouse or titled in the name of the guilty spouse as tenants in common with any other person or persons, the innocent spouse may petition the court, at least thirty (30) days prior to the court ordered forfeiture sale, to have the court vest the ownership of the property in the couple as tenants by the entirety, and the innocent spouse shall have the same rights as provided in subdivision (b)(2). If the petition is timely filed it shall be granted.

(B) The filing of such petition shall act as a stay of any court ordered sale of such property and such stay shall remain in effect until disposition is made of the petition.

(C) If the innocent spouse does not petition the court to vest the property ownership in the couple as tenants by the entirety, then the property shall be forfeited and disposed of as provided by this section.

SECTION 5. This act shall take effect on July 1, 2009, the public welfare requiring it.